IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4122 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

D M PARMAR - Petitioner(s)

Versus

CHIEF GENERAL MANAGER - Respondent(s)

==========

Appearance :

MR RC PATHAK for Petitioner No(s).: 1.

MR JS YADAV for Respondent No(s).: 1.

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 11/08/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the award dated 08.10.1991 passed by the Industrial Tribunal, Ahmedabad

in Reference (ITC) No. 37 of 1989, whereby the petitioner was granted reinstatement with 50 % back wages and also granted temporary status. By way of this petition, the petitioner has challenged that part of the order by which he was denied 50 % of the back wages and permanency.

2.0 The short facts of the case are that the petitioner was appointed as a daily wager by the respondent w.e.f. 01.08.1986 and his services were terminated w.e.f 02.06.1987. Against the said action, the petitioner raised an industrial dispute before the Industrial Tribunal, Ahmedabad. The Tribunal vide impugned order allowed the said reference as aforesaid. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. In the impugned order the Tribunal has not given any cogent reasons as to on what basis it has awarded 50 % back wages. It has awarded back wages while granting the benefit of doubt to the petitioner.

3.1 Moreover, in view of the principle laid down by the

Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, a workman cannot have automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

3.2 In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned order qua granting the petitioner back wages is required to be quashed and set aside.

4.0 So far as the contention with regard to grant of permanency is concerned, the same cannot be granted in view of the decision in the case of Amreli Municipality v. Gujarat Pradesh Municipal Employees Union reported in 2004 (2) G.L.H. pg. 692, wherein it has been held that the Labour Courts / Tribunals cannot issue directions conferring benefits of permanency or regularization when recruitment in the local body has been made dehors the recruitment rules. In that view of the matter, the

petition deserves to be dismissed.

5.0 For the foregoing reasons, the petition is dismissed. Rule is discharged with no order as to costs.

(K. S. JHAVERI, J.)

pravin/ *